

EXHIBIT 15

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 15, 2009

- - -

Oral deposition of DAVID T.
AUSTERN, ESQUIRE, taken pursuant to
notice, was held at the offices of ORRICK
HERRINGTON & SUTCLIFFE, LLP, Columbia
Center, 1152 15th Street, N.W.,
Washington, DC 20005-1706, commencing at
10:07 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -

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PROCEEDINGS

MR. GUY: We will follow the federal rules.

DAVID T. AUSTERN, ESQUIRE,
after having been first duly
sworn, was examined and testified
as follows:

EXAMINATION

BY MR. BROWN:

Q. Good morning, Mr. Austern.
My name is Michael Brown. I represent
OneBeacon American Insurance Company,
Seaton Insurance Company, GEICO, and
Republic Insurance Company.Could you state your full
name for the record, please?

A. David Thomas Austern.

Q. Have you ever been deposed
before?

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DEPOSITION SUPPORT INDEX

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Request for Production of Documents:

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NONE			

Stipulations:

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NONE			

Area(s) Marked Confidential:

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NONE			

A. Yes.

Q. How many times?

A. Somewhere between 25 and 30
times.Q. So it's fair to say that you
are familiar with the protocol for a
deposition then?

A. I am.

Q. Okay. Can you give me a
summary of your professional background?A. I was an assistant district
attorney in the New York County District
Attorney's Office for four years; I was
an assistant United States attorney in
the United States Attorney's Office in
Washington, D.C. for four years; I was a
law professor for two years; I was in the
private practice of law for something
like 12 years; and I've been general
counsel of the Manville Personal Injury
Settlement Trust, and I have had some
other asbestos matters for the last 21
and a half years. That doesn't add up to
45, and it should, but...

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1 **Q. Those are estimates, I take**
2 **it?**

3 A. Those are estimates, yes.

4 **Q. What did you do in**
5 **preparation for today's deposition?**

6 A. I reviewed some documents,
7 and I spoke to counsel.

8 **Q. What documents did you**
9 **review?**

10 A. I also reviewed some
11 transcripts.

12 I reviewed the Personal
13 Injury Trust Agreement; the Trust
14 Distribution Process -- the Personal
15 Injury Trust Distribution Process; the
16 Transfer Agreement; the Cooperation
17 Agreement; I reviewed Ms. Biggs' latest
18 estimation report; Dr. Peterson's latest
19 report; Dr. Florence's latest report;
20 Dr. Whitehouse's -- one of
21 Dr. Whitehouse's reports -- I am sorry --
22 two of Dr. Whitehouse's reports; the
23 rebuttal to those reports from Dr. Welsh
24 and Dr. Freedman; the objections filed by

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1 the Libby claimants and by one or more
2 insurance companies, and I am not sure I
3 know which ones; my prior deposition in
4 this case; my prior deposition in the
5 Combustion Engineering case; my testimony
6 in the Combustion Engineering case. I
7 may have left something out, but I think
8 those are most of the documents I
9 reviewed.

10 **Q. Okay. And you also**
11 **mentioned that you had reviewed some**
12 **transcripts?**

13 A. Those were the depositions
14 and trial testimony -- oh, excuse me.
15 Yes. I reviewed Mr. Lockwood's
16 deposition.

17 **Q. Did you actually review the**
18 **Amended Plan of Reorganization?**

19 A. Yes -- and excuse me -- and
20 the Disclosure Statement.

21 **Q. And over what period of time**
22 **did you review all these materials in**
23 **preparation for your deposition?**

24 A. Two weeks. I did one other

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1 thing in preparation of the deposition.
2 I listened to parts of, albeit not all,
3 of the Lockwood deposition.

4 **Q. Did you meet with counsel in**
5 **preparation for the deposition?**

6 A. Yes.

7 **Q. When?**

8 A. Last Friday and yesterday.

9 **Q. And for how long last**
10 **Friday? What period of time did you meet**
11 **with counsel?**

12 A. I confess I don't remember,
13 but it was several hours.

14 **Q. And the more recent meeting?**

15 A. I would say three hours.

16 **Q. Was it just counsel for the**
17 **Future Claimants' Representative or were**
18 **other Plan proponent counsel present?**

19 A. No. There were no other
20 Plan proponent counsel.

21 **Q. In reviewing Mr. Lockwood's**
22 **deposition testimony, was there anything**
23 **in his transcript with which you**
24 **disagreed?**

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1 A. I don't remember -- nothing
2 occurs to me, although if you showed me a
3 question and answer, I might say I
4 disagreed. But I don't recall anything.

5 **Q. Okay. When you listened in**
6 **on a portion of the deposition, was there**
7 **anything that you heard by way of an**
8 **answer by Mr. Lockwood that struck you as**
9 **inaccurate?**

10 A. Not that I recall.

11 **Q. Okay. Now, you mentioned**
12 **that you had reviewed the Disclosure**
13 **Statement, the Plan, the PI Trust**
14 **Agreement I assume you were referring to,**
15 **the PI Trust Distribution Procedures, the**
16 **Transfer Agreement, and the Cooperation**
17 **Agreement?**

18 A. Yes.

19 **Q. Do you understand all of**
20 **those documents?**

21 A. No.

22 **Q. Are there particular**
23 **documents that you understand better than**
24 **others?**

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1 Q. You will agree with me that
2 Section 2.2(f) sets forth a number of
3 different items for which the trustees
4 need the consent of the TAC and the
5 Future Claimants' Representative,
6 correct?

7 A. Yes.

8 Q. It goes on from Romanette 1
9 to Romanette 15, correct?

10 A. Yes.

11 Q. Why is there a need to have
12 the consent of the Future Claimants'
13 Representative and the TAC on these
14 particular items rather than simply
15 consultation?

16 A. My answer is the same, and I
17 will speak forgetting the TAC, as the
18 Future Claimants' Representative, I want
19 the right to under certain circumstances
20 not agree to a decision by the trustees
21 and have that be the end of the decision.

22 Q. Well, it's not actually the
23 end of the decision, is it?

24 A. No. There are ways of

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1 resolving that difference.

2 Q. And what are those?

3 A. Well, I may confuse this
4 with the Manville Trust, but you can
5 seek, shall we say, guidance from the
6 bankruptcy court.

7 Q. By that, you mean a ruling?

8 A. Yes, yes.

9 Q. If your consent has been
10 unreasonably withheld in the views of the
11 trustees?

12 A. That's correct.

13 Q. Is there anything in Section
14 524(g) to your knowledge that requires a
15 Trust, an asbestos Trust, to have a
16 consultation and consent provisions that
17 are set forth in this Trust Agreement?

18 A. I do not know of anything in
19 524(g) like that.

20 Q. Do you know who the
21 designated trustees are for the Asbestos
22 PI Trust?

23 A. Yes.

24 Q. Okay. Who are they? Or

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1 list of them.

2 A. Dean Trafelet, Lewis
3 Sifford, and Harry Huge.

4 Q. And do you know each of
5 those gentlemen?

6 A. Well, in the case of
7 Mr. Huge and Mr. Trafelet, I do know
8 them. In the case of Mr. Sifford, I have
9 met him on a number of occasions.

10 Q. Okay. What is the
11 professional background of Mr. Huge?

12 A. Let's see. I first met him
13 about 40 years ago at the Justice
14 Department. I am sorry. He is a lawyer.
15 He has been with the government. He has
16 been in private practice. Do you want
17 more?

18 Q. Does he have experience with
19 asbestos trusts?

20 A. Yes, he does.

21 Q. What is that experience?

22 A. He is a trustee of Armstrong
23 and I believe a trustee of OCF.

24 Q. How long has he had the role

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1 of trustee in Armstrong?

2 A. I met with him shortly after
3 he was appointed, and I should be able to
4 remember that. I think four or five
5 years.

6 Q. And how about as a trustee
7 in OCF?

8 A. I don't know.

9 Q. Okay. Why don't you tell me
10 what the professional background of
11 Mr. Sifford is?

12 A. I know him less well.
13 Mr. Sifford is a practicing lawyer in a
14 law firm, and he is an Armstrong trustee,
15 I believe. And that's, I believe, the
16 first time I met him, and thus I looked
17 him up. And according to
18 Martindale-Hubbell, he does both personal
19 injury plaintiff's work and personal
20 injury defense work. I am getting close
21 to exhausting my knowledge of him.

22 Q. Okay. Is the personal
23 injury work that he does, both defense
24 and plaintiff's work, asbestos-related?

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1 A. It is not as far as I know.

2 Q. Do you know what it does
3 relate to?

4 A. No.

5 Q. Okay. Do you know how long
6 he has been a trustee of the Armstrong
7 Trust?

8 A. The same period of time
9 Mr. Huge has been, but I don't remember
10 when that started.

11 Q. I thought you said that one
12 was four to five years ago?

13 A. Four to five years ago. I
14 don't remember exactly.

15 Q. All right. And what is the
16 professional background of Mr. Trafelet?

17 A. Before I get to that, let me
18 explain. Armstrong was confirmed, and
19 for a long time, there was no activity
20 for reasons that allude me. So I can't
21 remember exactly when I got involved in
22 talking to those people.

23 Q. Okay.

4 A. Mr. Trafelet is a lawyer who

1 Q. And would I be correct that
2 he's been that for four or five years?

3 A. Yes.

4 Q. Let's go to Section 4.9 of
5 the Trust Agreement. Take a moment to
6 read that, if you would.

7 A. Okay.

8 Q. The second-to-the-last
9 sentence in Section 4.9 says, "No Trustee
10 shall act as an attorney for any person
11 who holds an asbestos claim."

12 Do you see that?

13 A. Yes.

14 Q. What's the reason for that?

15 A. To avoid conflicts.

16 Q. What type of conflicts?

17 A. Well, you are a trustee of a
18 Plan paying somebody; you shouldn't be
19 paying your client.

20 Q. Is there any other reason?

21 A. Not that I know of.

22 MR. BROWN: Mark this as
23 Austern-4.

24 (Austern-4 marked for

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1 was a judge of, I believe, the Circuit
2 Court in Cook County, Illinois for a
3 period of time, and he is an asbestos
4 trustee of -- it seems to me, he is the
5 sole trustee of the Loomis Trust and also
6 a Futures Rep, I believe, at Armstrong.

7 Q. Okay. And he was one of the
8 gentlemen that you mentioned that, if I
9 remember correctly, the Asbestos PI
10 Committee, otherwise known as the ACC,
11 wanted to have the role that you have?

12 A. Yes.

13 Q. Do you know how long he has
14 been a trustee of the Loomis Trust?

15 A. Since it was confirmed. And
16 this I really should know, but I think it
17 was confirmed about three years ago.

18 Q. Okay. And do you know
19 whether he was the FCR in Armstrong
20 before a plan was confirmed?

1 A. I do not know.

22 Q. Okay. But he is the FCR for
23 the Trust?

24 A. Yes, I believe he is.

1 identification at this time.)

2 BY MR. BROWN:

3 Q. Exhibit-4, Mr. Austern, is
4 Exhibit 6 to the Exhibit Book. My first
5 question for you is, can you identify it?

6 A. It's the Asbestos Insurance
7 Transfer Agreement, which is part of the
8 Plan, as you point out.

9 Q. And I believe you said this
10 is one of the documents that you had
11 reviewed; am I correct?

12 A. Yes.

13 Q. Do you understand this
14 agreement?

15 A. Not in its entirety.

16 Q. Okay. Are there particular
17 provisions of this agreement that you do
18 not understand that you could direct my
19 attention to?

20 A. Well, I would have to look
21 at it for a moment. I am not sure I
22 understand all of the representations and
23 warranties and some of the terms in them.
24 There are two schedules, if I remember